IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 748 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NUTANBEN W/O KIRANKUMAR THAKOREBHAI DESAI
Versus
SATURBHAI TANK DELETED

Appearance:
1. First Appeal No. 748 of 2003
MR RR MARSHALL for Petitioner No. 1-3
DELETED for Respondent No. 1
MR MITUL K SHELAT for Respondent No. 2
NOTICE UNSERVED for Respondent No. 3
MR PV NANAVATI for Respondent No. 4
MR VIBHUTI NANAVATI for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 04/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

Admit.

Mr.Mitul Shelat,learned Counsel waives service for respondent no.2.

Mr.P.V.Nanavati, learned Counsel waives service for respondentno.4.

At the request of Mr. R.R.Marshall, learned Counsel for the appellants, respondent no.3 being dead, is ordered to be deleted.

With the consent of learned Counsel appearing for the parties, this appeal is heard and finally disposed of.

2. The appellants have filed this appeal under section 173 of the Motor Vehicles Act, 1988 against the judgment and order dated 22.6.2001 passed in MACP No. 768 of 1993 by the learned MACT (Auxi) Bharuch whereby the Tribunal awarded Rs. 3.46 lacs with proportionate costs and interest at the rate of 9% from the date of the petition till its realisation. It appears that the Tribunal, by its common judgment dated 22.6.2001, disposed of two claim petitions i.e. MACP No. 798 of 1993 and 768 of 1993. Those two claim petitions claiming compensation had arisen from a vehicular accident which took place on 18.5.1992 on N.H.No.8 near village Vagusaa i.e. near Hotel Saurashtra. It further appears that the original claimants of Claim Petition No. 798 of 1993 are the heirs and legal representatives of deceased Rajeshbhai Jashwantbhai Barot who lost his life in the vehicular accident while the other claim petition being MACP No. 768 of 1993 with which we are concerned has been filed by the widow of deceased Kiranbhai Thakorbhai Desai and her two minors children. The claimants in the said MACP filed the claim petition claiming compensation of Rs. 10 lacs along with interest at the rate of 18% from the date of application till its realisation.

3. The Tribunal, after appreciating the evidence on record, recorded a finding that the driver of ST bus was negligent to the extent of 90% while the driver of the jeep was negligent to the extent of 10%.

4. Learned Counsel Mr.Marshall appearing for the appellants as well as Mr. Mitul Shelat, appearing for the respondent no.2 GSRTC have virtually accepted the finding regarding rash and negligent driving on the part of drivers of vehicles involved in the accident and,

therefore, it is not necessary for us to discuss the evidence led by the parties in that regard.

5. Learned Counsel for the appellants has challenged the quantum part in the present appeal by contending that the Tribunal has committed an error in considering the salary of the deceased at Rs. 3000/-. In the submission of Mr.Marshall, the Tribunal has not considered prospective income of the deceased. He has further contended that the Tribunal has also committed an error in awarding multiplier of 12 years particularly in view of the fact that the deceased has two minor children and he died at the young age of 32 years.

6. We have gone through the reasonings given by the Tribunal on the question of quantum. In para 14 of the judgment, the Tribunal, after considering the Salary Register Ex. 51, held that the total salary of the deceased was Rs. 3000/-. Even after considering the salary certificate of the deceased, the Tribunal further confirmed the said finding by holding that the salary of the deceased was Rs. 3000/- permonth. Not only that, but the said income is also considered as prospective income of the deceased. In our opinion, the Tribunal has obviously committed an error in treating the income of Rs. 3000/- to be the prospective income of the deceased. Mr. Shelat, appearing for the GSRTC has frankly conceded that the Tribunal has, in fact, committed an error in treating the income of Rs. 3000/- as prospective income of the deceased. As per the formula fixed by the Apex Court as well as by this Court, the salary of the deceased at the time of his death is required to be increased by doubling it which comes to Rs. 6000/-. Deducting 50% from the increased amount, it comes to Rs. 1500/- and thereafter adding the same to the amount of present salary, it would come to Rs. 4500/-. Thus, the amount of Rs.4500/- would be the prospective income. From the said prospective income, deducting an amount of Rs. 1500/- towards personal expenses, the net dependency benefit for the heirs and legal representatives of the deceased would come to Rs. 3000/- per month. Multiplying the said figure by 12, annual dependency benefit would come to Rs. 36000/-. As observed earlier, the deceased was of 32 years of age and, therefore, multiplier of 17 as provided in the Second Schedule to the Motor Vehicles Act, 1988 would be applicable. Thus, it would come to Rs. 6.12 lacs. Deducting 10% of the said amount towards contributory negligence of the deceased, the net amount of compensation would come to Rs. 5,50,800/-. Deducting an amount of Rs. 2.88 lacs awarded by the Tribunal, the additional amount of

compensation would come to Rs. 2,72,800/-.

7. In view of the above discussion, we allow this appeal. The appellants shall be entitled to get from respondent no.2-GSRTC, an amount of Rs. 2,72,800/- with proportionate costs and interest at the rate of 9% from the date of the petition till realisation. The judgment and award of the Tribunal shall stand modified accordingly.

Since the amount which we are awarding is more than the amount claimed in the appeal, i.e. Rs. 1.5 lacs, we grant the oral request made by Mr. Marshal to amend the claim in the appeal and pay the remaining amount of court fees, within two weeks from today.The respondent no.2 GSRTC shall deposit the additional amount awarded within three months from the date of this order. On respondent no.2 depositing the amount as aforesaid, the Tribunal shall pass appropriate orders regarding disbursement/ investment.

Order accordingly. No order as to costs.

(Kshitij R.Vyas,J.)

(Akshay H.Mehta,J.)

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